

**Guilford
County**

**Historic
Preservation
Commission**

**Rules of
Procedure**

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TABLE OF CONTENTS

1.0 PURPOSE AND DUTIES	1
1.1 Purpose	1
1.2 Duties	1
1.3 Jurisdiction	1
2.0 GENERAL GOVERNING STATUTES, ORDINANCES AND RULES	1
3.0 ORGANIZATION OF THE HPC	1
3.1 Membership.....	1
3.2 Term of Office	2
3.3 Officers	2
3.4 Staff Assistance.....	3
3.5 Special Committees.....	3
3.6 Attendance	3
3.7 Vacancies	4
3.8 Resignations and Removal	5
4.0 MEETING STRUCTURE	5
4.1 Open Meetings.....	5
4.2 Regular Meetings	6
4.3 Special Meetings	6
4.4 Continued Meetings.....	7
4.5 Cancellation of Meetings.....	7
4.6 Agendas and Meeting Order of Business	7
4.7 Hearings.....	8
4.8 Public Testimony.....	9
4.9 Advisory Review.....	9
5.0 CONDUCTING BUSINESS	11
5.1 General Expectations of Members.....	11
5.2 General Conduct of Members.....	11
5.3 Violation of Due Process / Conflict of Interest.....	12
5.4 Motions	13
5.5 Deliberation	14
5.6 Decisions.....	15
6.0 RECORD KEEPING	16
7.0 REHEARING OF DENIED APPLICATIONS.....	16
8.0 MODIFICATIONS TO APPLICATIONS.....	17
9.0 APPEALS.....	17
10.0 AMENDMENT OF THE RULES OF PROCEDURE	17

GUILFORD COUNTY HISTORIC PRESERVATION COMMISSION RULES OF PROCEDURE

Section 1. Purpose and Duties

1.1. Purpose

To establish procedures for organizing and conducting the business of the Historic Preservation Commission (hereinafter, "HPC") in executing its duties and responsibilities.

1.2. Duties

The duties of the HPC shall be those listed *in Article 2-Administration, Section 2.6.* of the Guilford County Unified Development Ordinance (hereinafter, "Development Ordinance").

1.3 Jurisdiction

The HPC's jurisdiction for approval of Certificates of Appropriateness within Historic Districts Overlays shall be delineated on the official zoning map.

Section 2. General Governing Statutes, Ordinances and Rules

The HPC is governed by the applicable provisions of the North Carolina General Statutes 160D, Article 19; the current Unified Development Ordinance and all amendments thereto; other relevant policies established by the Guilford County Board of Commissioners (hereinafter referred to as "Board of County Commissioners"); and by these Rules to the extent that they do not conflict with the law.

Section 3. Organization of the HPC

3.1. Membership

The HPC shall be made up of eleven (11) members (collectively, "members").

3.1.1. Residency, Appointment and Qualification of Members All members shall be residents of the County and shall be appointed by the Board of County Commissioners. Members shall be trained in the fields of architecture; history; planning; archaeology or a related discipline; or have demonstrated experience or interest in the preservation of historic structures.

3.1.2. Quorum

A quorum of the HPC shall consist of a majority of the set membership, excluding vacant seats, but not excluding absents. A quorum must be present for the HPC to take any official action.

3.2. Term of Office

Members' four (4)-year terms of office are set by participating jurisdictions as prescribed in the Development Ordinance. Members may be appointed to fill an unexpired term of a previous member. Member terms should be staggered such that a similar number of members are appointed or reappointed each year. The terms of all members shall not expire at the same time.

3.3. Officers

3.3.1. Election of Officers

Annually, the HPC shall elect from its membership a Chair and Vice Chair. The newly elected officers shall assume their duties at the July meeting following the election or at the next meeting (regular or called) of the Board if the election is conducted in July or later, or if the July meeting is cancelled. Nominations shall be moved and seconded, and any number of members may be nominated. Voting may be done by acclamation (if only one member is nominated), show of hands, voice, or by secret ballot following a motion and majority vote of the members.

3.3.2. Chair

The Chair's term of office shall be one year, ending on June 30, but shall be eligible for reelection. The Chair shall preside at all meetings, supervise the affairs of the HPC, and subject to these rules shall decide all points of procedure unless otherwise directed by a majority of the members in session at the time. The Chair may call a special meeting as necessary.

3.3.3. Vice Chair

The Vice Chair's term of office shall be one year, ending on June 30, but shall be eligible for reelection. The Vice Chair shall preside at any meeting in the absence of the Chair and shall exercise all duties of the Chair.

3.4. Staff Assistance

3.4.1. Secretary

A staff member of the Planning and Development Department, assigned and supervised by the Planning and Development Director (hereinafter, Director), shall serve as Secretary to the HPC. The Secretary's primary duties are to prepare minutes of the meetings, maintain attendance and other official records of the HPC, and to certify and file signed decisions of the HPC, but may include other clerical and administrative duties as assigned by the Director or designee.

3.4.2. Additional Staff Support

The Director or designee shall provide professional and technical support to the HPC, which may include preparation of meeting materials, presentations, recommendations, conducting official correspondence, and other staff support as requested by the HPC and determined appropriate by the Director or designee.

3.5. Special Committees

Special committees may be established by a majority vote of the HPC to assist in studying specific issues. Special committee members shall be appointed by the Chair or a designated member. Special committees may contain persons who are not members of the HPC. The HPC may not delegate its official powers and duties to a special committee.

3.6. Attendance

Persons accepting appointment to the HPC have made a commitment to serve the citizens of Guilford County. Applicants coming before the HPC deserve a full complement of members to be present to review and recommend/decide matters. Consistent attendance at meetings of the HPC is expected.

3.6.1. Reporting Absences

A member who anticipates not being able to attend a meeting of the HPC must contact the Secretary upon receipt of the agenda (or earlier, if possible) and indicate the reason for the absence. In the event of an unforeseen emergency or illness, notification to the Secretary shall be given as early as is feasible.

3.6.2 Approved Absences

Absences due to sickness, death in the family, or other emergencies of a similar nature shall be regarded as approved absences and shall not affect the member's status on the HPC. Known work commitments, vacations, or other non-medical conditions are not approved absences. In the event of a long-term illness or other situation resulting in a prolonged absence, the member may be replaced by the Guilford County Board of County Commissioners.

3.6.3. Attendance Requirement

A member who misses three (3) consecutive regular meetings 33% or more of the regular meetings held in a fiscal year due to unapproved absences loses status as a voting member until reinstated by the Board of County Commissioners and may be replaced. Attendance records shall be periodically reviewed by the Director, who shall inform the member of any noncompliance with the attendance requirement.

3.6.4. Absence of Officers

In the absence of both the Chair and Vice Chair, the HPC membership in attendance shall vote to determine an acting Chair for the meeting.

3.7. Vacancies

3.7.1. Filling Vacancies

A vacancy in the office of Chair shall be filled by the Vice Chair, succeeding to the office for the remainder of the unexpired one-year term of the Chair. A vacancy in the office of Vice Chair shall be filled by election of a new Vice Chair from the membership for the remainder of the one-year unexpired term of the Vice Chair. Member vacancies shall be filled by a new member appointed by the governing body to fill the remainder of the unexpired term.

3.7.2. Member Continuing Service Beyond Term

Members completing a term of office, who have not been reappointed and for whose seat a new appointment has not been made by the governing body, may continue to serve until reappointment or a new appointment is made.

3.8. Resignations and Removal

3.8.1. Resignation

A. HPC members who have chosen to resign before the expiration of their must notify the Director or designee in writing (letter or email). This notice shall include the date upon which the resignation is effective, which if possible, should be at least thirty (30) days from the date of the notice.

B. If a member of the HPC no longer resides within the County, the move constitutes a resignation effective upon the date of the move.

C. The Director shall promptly inform the County Clerk of any vacancy on the HPC.

3.8.2. Removal

A. HPC members may be removed by the governing body for cause, including but not limited to violation of these Rules.

B. The HPC may, by unanimous vote of the other members, recommend that a member be removed for cause and a replacement be appointed by the governing body. Such a recommendation shall be communicated in writing by the Director to the governing body and to the HPC member in question in writing.

Section 4. Meeting Structure

4.1. Open Meetings

It is the public policy of North Carolina that the hearings, deliberations, and actions of public bodies that administer the legislative, policy-making, quasi-judicial, administrative and advisory functions of political subdivisions conducting the people's business, be conducted openly. Therefore, all official meetings of the HPC, with a very few exceptions that are allowed by state law, shall be open to the public and any person is entitled to attend. The public's right to attend such meeting does not necessarily entitle the public to participate in the meeting. An official meeting means a gathering together at any time or place, or the simultaneous communication by conference telephone or other electronic

means, of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business that is within the jurisdiction, real or apparent, of the public body.

4.2. Regular Meetings

4.2.1. Date, Time, and Place

Regular meetings of the HPC shall be held on the second Wednesday of each month at 6:00 p.m. Regular meetings may be established at an alternate time and date at the discretion of the HPC due to holidays or other reasons. The meetings shall be held the Blue Room, Old County Courthouse, or any other location within the County as properly advertised.

4.2.2. Meeting Schedule

Regular meetings for the calendar year shall be made available to the public in paper or electronic format and posted on the Department's website. Changes in the regular meeting schedule shall follow the notice requirements of North Carolina law.

4.2.3. Meeting Notice

Notices of meetings shall be provided in accordance with the notice requirements of North Carolina law.

4.3. Special Meetings

A special meeting of the HPC may be called at any time by the Chair or by a majority of the membership. Notice of the date, time and place of the special meeting, along with the purpose of the meeting, shall be provided by the Director to each member at least 48 hours in advance of the meeting. Only those items of business specified in the notice may be transacted at a special meeting. The notice must be posted on the Planning & Development Department website and shall comply with all other applicable notice requirements of North Carolina law.

4.4. Continued Meetings

Any regular or special meeting may be continued or postponed to another specific date, time and place without additional public notice by a majority vote of the HPC, in accordance with the deferral and continuance provisions of the Development Ordinance, as applicable, and these Rules.

4.5. Cancellation of Meetings

Whenever there is no business for the HPC, the Director or designee may recommend that the Chair cancel a meeting. The Chair may cancel any meeting for good cause, including a known lack of a quorum or severe weather. Notice shall be given by the Director or designee, at least twenty-four (24) hours before the meeting was scheduled to take place, to all members and to the press, applicants and other interested persons. In the case of severe weather, notice of cancellation shall be given at the earliest practical time.

4.6. Agendas and Meeting Order of Business

4.6.1 Agendas

Meeting agendas and appropriate review materials and reports shall be prepared by the Director or designee or Secretary and distributed to all members. No business, old or new, may be considered by the HPC unless such item properly appears on the agenda. However, a matter of business not subject to public notice requirements may be discussed or considered as a non-agenda item if the HPC approves for consideration.

4.6.2 Meeting Order of Business

The order of business at meetings shall be:

- Call to Order (including roll call)
- Approval of Minutes of Previous Meeting(s)
- Chair's Remarks and Instructions
- Unfinished Business (continued cases; items previously discussed for which action was held or delayed; or work session items)
- Hearing Items
- New Business (other than hearing items)
- Committee Reports (if applicable)
- Announcements
- Adjournment

The order of agenda items may be changed by the Chair if there is no objection from the members present.

4.7 Hearings

4.7.1 Application Submittal

In accordance with the Development Ordinance, the Director or designee shall establish specific submittal requirements and review schedules for the applications heard by the HPC.

4.7.2 Attendance by Applicant

The Director or designee shall notify the applicant of the date, place and time of the hearing in accordance with the public notification requirements of the Development Ordinance. The applicant, or a knowledgeable representative of the applicant, is expected to attend the hearing to support the application. This attendee should be capable of addressing issues and answering questions. If no one is present to represent the application, the HPC may, in its discretion, continue the hearing to its next regular meeting.

4.7.3 Type of Hearing

The HPC follows a quasi-judicial, evidentiary hearing process for formal review of Certificates of Appropriateness, which requires all testimony to be sworn, and which requires the HPC to conclude certain findings before approving a Certificate of Appropriateness.

4.7.4 Hearing Procedure

The HPC shall conduct its hearings in accordance with the quasi-judicial, evidentiary hearing procedures of the Development Ordinance outlined below:

- 4.7.4.1** Chair announces the item from the agenda
- 4.7.4.2** Swear-in or affirm witnesses
- 4.7.4.3** Hear staff presentation and recommendation
- 4.7.4.4** Hear applicant testimony
- 4.7.4.5** Hear testimony from the public (for and against the application)
- 4.7.4.6** Rebuttal/cross-examination of proponents/opponents
- 4.7.4.7** Closing of testimony from the public by the Chair
- 4.7.4.8** HPC asks questions of staff, applicant, persons who have testified
- 4.7.4.9** Deliberation and decision

4.7.5 Evidence

A. Although the HPC is not bound by all the rules of evidence followed in judicial proceedings, evidence upon which decisions are based should be material (directly related to the matter and likely to influence the decision), substantial (of real value, worth or importance) and competent (having legal capacity or qualification).

B. The HPC may, in its discretion, view the premises and obtain facts concerning any application before arriving at a decision. All decisions of the HPC shall be supported by appropriate Findings of Fact. Findings of Fact may not be based on hearsay evidence. Hearsay is a statement not made at the hearing that the proponent seeks to have admitted as evidence of the truth of the matter asserted in that statement.

C. The HPC, in order to make a defensible decision, should not rely on the opinion testimony of laymen to support a finding that requires information from those with expertise in the matter.

4.8 Public Testimony

The Chair may limit repetitive testimony on any item and may restrict anyone from making inappropriate or malicious remarks or remarks not pertinent to the matter under consideration.

4.9. Advisory Review by Historic Preservation Commission

For larger or more complex projects, such as new construction or certain accessory structures, an Advisory Review by the HPC is offered. The purpose of an Advisory Review is to provide helpful feedback to the applicant early in the design process. There is no fee for this review. Examples of projects that would benefit from an Advisory Review include:

- construction of an addition,
- construction of accessory structure greater than 120 sq ft or two stories,
- new construction,
- relocation of a structure; and
- alternatives to original materials.

4.9.1 Scheduling an Advisory Review

Advisory Reviews are held at the end of regularly scheduled HPC public meetings which begin at 6:00 p.m. and occur on the third Thursday of every month. A completed Advisory Review form and required materials must be submitted according to the same application submittal deadlines as for formal Certificate of Appropriateness applications. Advisory Review submittals are advertised along with the regular HPC public meeting agenda.

4.9.2 Completing an Advisory Reform

An Advisory Review form must be completed, signed and submitted with drawings with a minimum of overall dimensions and completed at least to the conceptual level (preferably printable at 8.5" x 11") which depicts the existing structure and/or proposed changes or new construction including:

- site plan indicating proposed building footprint and setbacks with dimensions if known;
- photographs of the proposed site including any available historic photos and aerials; for relocation of a structure
- photographs of each façade; labeled with name of property, situs address, and viewpoint and keyed to the site plan;
- elevation drawings of new construction/changed façades as needed with *at least overall* dimensions (drawings depicting three-dimensional views and physical models are typically optional, but are very helpful in conveying more complex projects effectively);
- specifications and/or samples for materials, architectural details, and elements such as windows and doors (for applications to relocate a structure, provide information on proposed revisions to the structure that would result from the relocation); and
- while not required, a 3-D or modeling study of a streetscape if infill construction is proposed is helpful in the HPC's review.

4.9.3 Advisory Review Public Meeting

Although it is the goal of the HPC to provide comments that will result in a project that will be approved, comments provided during the Advisory Review are not binding, and the final decision of the HPC shall not be based on these comments. The informal review format is as follows:

- Staff will make a brief presentation (5 minutes) identifying aspects of the project that should be addressed by the HPC.
- Applicant will make a presentation (5 minutes) describing the project.
- The HPC will discuss the project and consider whether the project is consistent with the applicable Review Standards and the SOI Standards. While HPC members may discuss the appropriateness of a design approach and how may or may not be supported by the local designation Review Standards or the SOI Standards, their role is not to re-design the project, but to respond to the project before them. Given the complex nature of some large rehabilitation projects, the HPC may recommend that the applicant retain an architect with experience in restoration or infill design.
- The HPC Chair will summarize aspects that were identified as not meeting specific Review Standards. Depending on the degree of clarity of the presentation or the degree of revisions that are recommended, the applicant may request or the HPC may recommend an additional Advisory Review.

Section 5. Conducting Business

5.1. General Expectations of Members

- Be generally familiar with the laws and ordinances relating to the work of the HPC, and with these Rules of Procedure;
- Be prepared for meetings by examining the information provided in the meeting packet and consulting staff with questions; visit each site to observe from right-of-way.
- Ask questions as appropriate during the hearing and actively participate in deliberations;
- Consider all information on each matter before the HPC and make an informed decision; and
- Make decision in a fair, ethical, and non-arbitrary consistent manner.

5.2. General Conduct of Members

Members of the HPC participating in a hearing and making a decision or a recommendation are expected to act in accordance with the following:

5.2.1. No Prejudice

Members shall consider the application/request without prejudice.

5.2.2. No Commitment Prior to Review

Members shall take no public position on an application or on any proposed condition prior to the meeting at which the application is heard.

5.2.3. No Deliberation or Formulation of Decision Prior to Meeting

Members shall refrain from deliberation with other members or formulation of a judgment or decision prior to the meeting at which the application is heard.

5.2.4. No Ex-Parte Communication

No HPC member shall, in any manner, discuss any Certificate of Appropriateness application with the applicant, other HPC members, or any other parties prior to the HPC's deliberations on the matter during the hearing. The HPC's quasi-judicial procedures are designed to ensure that all information and discussions regarding the matter under consideration take place during the HPC's evidentiary hearing, so that all parties hear the same testimony at the same time, and so that persons giving testimony can be questioned in person by the HPC and by opposing parties. Any communication regarding a pending application that does occur outside of the hearing must be fully disclosed by the member or members involved before the start of the appropriate hearing. Members may, however, seek or receive explanatory information or clarification pertaining to the application from the Director or designee prior to the hearing. Any such explanation or clarification shall be provided by the Director or designee to all members.

5.2.5. Acknowledgement of Relationship or Association with an Applicant or Other Party

Members should, prior to or at the beginning of the public hearing, disclose any past or present close familial, business or associational relationship with an applicant or other party to the matter.

5.3. Violation of Due Process / Conflict of Interest

A member shall not participate in or vote on any matter that has a direct, substantial and readily identifiable financial impact on the member, nor participate in or vote on any matter in a way that would violate the applicant's or an affected person's constitutional right to an impartial decision-maker. Adhering to these Rules can help members to avoid situations that can affect impartiality and therefore present a conflict of interest, or the appearance of a conflict of interest.

Members are encouraged to consult the Director or designee regarding situations that may be considered a conflict of interest or a perceived conflict of interest.

If a member has a conflict of interest regarding any matter before the HPC, the member should inform the Director or designee as soon as possible in advance of the meeting, to allow time for an alternate member to be contacted to participate in his or her place.

5.3.1. Recusal (Excuse from Participation)

If a member realizes at the meeting that he or she may have a conflict of interest concerning a matter on the agenda, a request for recusal must be made immediately before the start of the hearing and must be voted on (recognized) by the HPC for the record. A member with a recognized conflict of interest relative to any matter shall not participate in the hearing, deliberation or voting on the matter. A recused member shall physically vacate his or her seat while the matter is being considered. If there is a challenge to a member's participation in a matter due to an alleged conflict of interest, the member shall be given the opportunity to request recusal, or to refute the allegation. The remaining members of the HPC shall then by majority vote in order to decide the issue.

5.4. Motions

The HPC shall proceed in all matters by motion. Any member, including the Chair, may make or second a motion. A motion may be amended by any member, subject to the agreement of the member who made the motion. A motion may be withdrawn by the member making the motion at any time before a vote. Unless withdrawn, all seconded motions must be voted upon. A motion that does not receive a second fails automatically and is not voted upon.

5.4.1. Substantive and Substitute Motions

Substantive motions are non-procedural motions that result in final disposition of the matter under consideration. The HPC motions are:

- Approval as submitted (no changes to the application)
- Approval as amended (with specific conditions or additions stated)
- Denial

All substantive motions are debatable and require a majority vote of members present to approve. While a substantive motion is pending, meaning that it has been seconded but not voted upon, a *substitute motion* regarding the same issue may be introduced. If seconded, the substitute motion shall be voted upon first. If the substitute motion is approved, the original motion is

automatically deemed denied. If the substitute motion fails, then the original motion is voted upon, or another substitute motion can be made. Only one substitute motion can be under consideration at a time.

5.4.2 Procedural Motions

Procedural motions in the collective provide a structure for conducting the business of the HPC and promote propriety of behavior. Below are procedural motions that may be utilized in meetings of the HPC:

- Approval of minutes
- Postpone consideration (to a date and time certain, with reasons stated)
- Take a recess (a short break)
- Call the question (to end discussion among HPC members)
- Refer to committee (where an appropriate committee exists)
- Re-open public testimony (after the Chair has closed it)
- Reconsider (re-open a case decided at the same meeting)
- Adjourn
- Excuse from participation (recuse) (voluntary - exclusion from participation in a matter)
- Remove from participation (involuntary - when an objection to participation is raised by another HPC member or a party to the matter and is found to be valid by the HPC)
- To consider an item not on the meeting agenda (if not subject to evidentiary notice requirements)
- To change the order of agenda items (when the Chair does not have unanimous consent).

All procedural motions are open to discussion with the exception of a motion to recess, adjourn or call the question, which are voted on immediately. All motions require a majority vote of the members present.

5.5. Deliberation

When a motion is introduced and seconded, the Chair should state the motion for the purpose of clarity and understanding, and then open the floor for discussion by the HPC members. The member who introduced the motion is entitled to speak first, and all members should be given the opportunity to speak. Any member may move to call the question when it appears that deliberations are concluded, or there is an impasse. A majority vote will then end deliberations. A vote is then taken on the original motion.

5.6. Decisions

Provided a quorum is present, all decisions of the HPC shall be made by a majority of the members present.

5.6.1. Qualification to Vote

No HPC member shall vote on any matter before the HPC unless that member shall have attended the previous deliberations on such matter or shall otherwise have the approval of the Chair to vote on such matter. The Chair's approval shall be contingent on the assurance by the member that the member has read or reviewed all material distributed to the HPC related to the matter, including any material presented by the applicant during the previous deliberations and the minutes of any meeting at which the matter was discussed.

5.6.2. Voting

- A.** No member attending the presentation and hearing on a matter shall be excused from voting except for cause by majority vote of the HPC.
- B.** A failure to vote by a member who is physically present at the hearing, or who has withdrawn without having been excused or recused by the HPC, shall be recorded as an affirmative vote.
- C.** A tie vote constitutes disapproval of the motion.
- D.** The method of voting shall be decided upon by the Chair, and may be by show of hands, "yes" or "no", or roll call. Any member may motion for a roll call vote on a matter, which shall require a majority vote to conduct.

5.6.3. Form of Decisions

Certificate of Appropriateness (COA) decisions shall be certified and filed by the Director or designee and communicated to the applicant in writing within ten (10) business days of the decision. Decisions regarding COA applications must be based on whether the proposed activity is congruous with the special character of the historic district or Historic Landmark. Notification shall include any instructions or conditions relative to the action taken. The Planning and Development Director shall make all decisions available to the public in the offices of the Planning and Development Department during normal business hours.

5.6.4 Expiration of Decisions

A COA shall expire and become null and void if construction, any approved change, relocation, or demolition has not commenced for projects approved by the COA within 1 year (365 days) of its issuance.

Section 6. Record Keeping

The minutes of all meetings and other records of the HPC shall be maintained by the Secretary or other designee of the Director. Minutes of meetings shall be prepared by the Secretary or designee and should be transmitted to the HPC prior to the next regular meeting. Minutes are not official until approved by the HPC, at which time they become the official public record of the HPC's actions.

Minutes shall include the following:

- Date, time and place of the meeting
- Names of members in attendance and names of absent members
- Names of staff members in attendance
- Names and addresses of owner(s), agent(s), applicant(s) and others that spoke on each matter
- A summary of evidence presented to the HPC on each matter
- A summary of the discussion on each matter
- The wording of each motion or resolution, including which members made the member seconded the motion; and
- All votes of the HPC.

All application records and supporting materials are to be retained electronically by the Director in accordance with North Carolina records retention rules.

Section 7. Rehearing of Denied Applications

The HPC has no legal authority or jurisdiction to hear the same matter a second time. Therefore, if an applicant desires to submit a second application regarding a previously denied request, the applicant must first appear before the HPC to present evidence that there has been a substantial change in the application, relevant ordinance provisions, evidence or material site conditions in the matter that presents new issues, hence allowing a second application to be heard as an entirely new proceeding. If the HPC determines no substantial change exists, it shall deny a rehearing on the matter. If the HPC determines that there has been a substantial change, it shall thereupon treat a subsequent application in the same manner as any other application.

Section 8. Modifications to Applications

An approved or pending application for a Certificate of Appropriateness may be modified by a written request from the applicant to the HPC. Such a request shall include a description of the proposed change and shall be accompanied by elevations, plans or other drawings, where necessary. If the HPC finds that the modification constitutes a substantial change which might affect surrounding property owners, it shall notify affected property owners following the procedures set out in Section 4 of these Rules before taking action on the modification. The HPC shall thereupon treat the request in the same manner as any other application as outlined in Section 4 of these Rules.

Section 9. Appeals

An appeal may be taken to the Board of Adjustment from the HPC 1) may be taken by any aggrieved party, 2) shall be taken within fifteen (15) days after the decision of the HPC, and 3) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Superior Court of Guilford County.

Section 10. Amendment of the Rules of Procedure

These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of a majority of members present, provided a quorum of members exists, and provided that the amendment to be voted on was presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

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